

**TOWN OF KITTERY, ME
PLANNING BOARD MEETING
Council Chambers**

**APPROVED
JANUARY 14, 2016**

Meeting called to order: 6:03

Roll Call:

Board members present: Vice Chair Karen Kalmar, Robert Harris, Deborah Lynch, Secretary Debbie Driscoll-Davis, Mark Alesse

Board members absent: Chair Ann Grinnell

Staff present: Chris Di Matteo, Town Planner and Rebecca Spitko, Assistant Town Planner

Pledge of Allegiance

Minutes: November 19, 2015

Ms. Driscoll-Davis and Ms. Kalmar asked for the following changes to the unapproved minutes

1. Line 47 – verbiage: replace boards with committees
2. Line 50 – grammatical adjustment: insert “to” between approach and council
3. Line 123 – factual correction: replace Memorial Bridge with Sarah Mildred Long Bridge
4. Line 201 – grammatical adjustment: remove “said”
5. Line 280 – spelling: “opposed”
6. Line 297 – spelling: “added”
7. Line 322 – remove “C. Other”
8. Line 339 – verbiage – change sentence to “she would like to see some cluster items”

Ms. Driscoll-Davis moved to approve the November 19, 2015 minutes as amended.

Mr. Alesse seconded.

Motion passed 5-0-0

Minutes: December 10, 2015

Ms. Driscoll Davis, Ms. Earldean Wells and Ms. Kalmar asked for the following changes to the unapproved minutes

1. Line 41 – change Dan Moore to Don Moore
2. Line 47 – change Mr. Thomas to Mr. Harmon
3. Line 446 – indicate the conversation is regarding possible traffic pattern changes to the Foreside Neighborhood
4. Line 384 & Line 386 - replace Foreside Design Review Committee with Foreside Neighborhood Committee

Ms. Driscoll-Davis moved to approve the November 19, 2015 minutes as amended.

Mr. Alesse seconded.

Motion passed 5-0-0

Public Comment: Ms. Kalmar opened the floor for public comment. Hearing none, Ms. Kalmar closed public comment.

ITEM 1 – Rockwell Homes, 89 Route 236 – Final Plan Review

Action: Approve or deny final plan Owner/applicant Rockwell Homes, LLC request consideration of plans for a single, 2,520-square-foot building containing business offices and a showroom and a drive-through-only restaurant at 89 Route 236 (Tax Map 28, Lot 14-2) in the Commercial 2 (C-2) Zone. Agent is Ryan McCarthy, Tidewater Engineering & Surveying, LLC.

Mr. Ryan McCarthy, Mr. Bill Eaten, and Ms. Robbi Woodburn approached the Board to present on behalf of the proposal. Mr. McCarthy reviewed the proposal, noting preliminary approval was received in September 2015. Mr. McCarthy highlighted the following points in response to previously noted areas of concern:

1. Traffic congestion along Rte. 236.
 - a. Mr. Eaten conducted a traffic analysis report and determined 136 vehicles could be expected to enter the site during the period of peak morning traffic. Due to a volume of over 100 vehicles, the proposal was required to obtain a traffic movement permit from Maine DOT. The applicants met with DOT in November and it was determined a southbound turning lane would be required. No turning land is required for northbound traffic. The applicant has submitted modified plans to include a right-hand turning lane heading southbound on Rte 236 to MDOT and received approval.
2. Landscaping
 - a. The proposed cleared area has been reduced by an additional 70 feet from the preliminary plan. Clearing will only occur along the frontage of Route 236. The trees along Fernald Rd will remain.
 - b. A row of shrubs has been added along Route 236 to shield headlights from drive-through patrons from traffic.
 - c. The landscaping intended to screen the parking area has expanded. This was executed by tightening the front walkways closer to the principle building.
 - d. Applicant agreed to pull street trees uphill in order to be positioned away from the wetland and into well-draining soil.
3. Wetlands
 - a. In response to concerns issued by Conservation Commission on the tree removal within the wetland, the applicant hired a licensed soil scientist and licensed site evaluator to assess the impact of the proposal. It was determined that the removal of trees will not degrade the value of wetland and will likely improve the functionality of sediment and pollution removal. The applicant also spoke with Chris Coppi, Maine DEP, who determined the impact is permitted by state statute as the wetland does not meet minimum size mandates for state regulatory standards, and contains less than the 4300 square foot impact allowance.

Mr. McCarthy concluded his presentation with an updated architectural depiction of the proposal that includes three reverse gables and updated siding.

Mr. Harris asked whether Maine DEP agreed to the impact to the wetlands. Mr. McCarthy confirmed.

Ms. Driscoll-Davis asked whether the road sign has adequate clearance for visibility. Mr. McCarthy stated the sign is 20-30' from where stopped vehicles will be located due to setbacks imposed by the right-of-way, therefore visibility under the sign will not be an issue. Ms. Driscoll-Davis asked if there is a minimum distance between the lower edge of the sign and the ground. Mr. McCarthy was unsure but noted the sign meets maximum height allowances and affirmed the square footage allowance for the sign has been met.

Mr. Alesse noted cars exiting the property with the intention to turn left onto Rte 236 may cause a backup in the drive through area. Mr. McCarthy explained the proposal includes two exit lanes, allowing cars who wish to travel north a separate exit lane from cars traveling south.

Ms. Kalmar asked about the effectiveness of the shrubs along Rte 236 in shielding headlights during the winter months. Ms. Woodburn, landscape architect, responded that, while the shrubs are deciduous, they were chosen for their dense limb system and are expected to be effective in shielding headlights without or without leaves.

Ms. Earldean Wells requested the addition of a landscape sheet (L-1) to show the new location of the trees that were previously planned to be planted in the wetland. Mr. McCarthy agreed.

Ms. Driscoll-Davis asked if the applicant plans to move the dumpster, or if the intent is to leave it where it is depicted on the plan as it currently serves as a headlight shield for traffic along Fernald Road. Mr. McCarthy confirmed the plan is to leave it where it is currently located/depicted on the plan.

Ms. Kalmar requested a modification of the language used on the plan regarding parking so it is an exact match to language used in the Findings of Fact. Mr. McCarthy agreed.

Ms. Driscoll-Davis read the following statement from the staff notes: "available parking must be increased as determined by the Planning Board". She questioned whether this is appropriate, as the Code Enforcement Officer would be better equipped to see any parking inadequacies. Mr. Di Matteo clarified the Code Enforcement Officer may determine a parking issue and would then direct the applicant to the Board to decide remedial action.

Mr. Di Matteo asked Mr. McCarthy if there were recommendations in the staff notes that the applicant does to agree to or comply with, specifically addressing the recommended replanting plan as described in the staff notes. Mr. McCarthy stated the final draft includes increased vegetation to screen the parking, as compared to the preliminary plan, and therefore feels the concern noted by Mr. Di Matteo has already been addressed. Ms. Woodburn stated the vegetation in parking island would be knock out roses and other perennials so that will satisfy the ideal 3-foot vegetation shield. Ms. Woodburn noted parking islands generally hold a significant amount of snow during the winter months, as they are often used to store snow. The plants that were chosen for this island will screen parking during the summer while enduring the harsher winter climate. Mr. Di Matteo clarified the planting along the parking screen is limited to approximately 3 feet in height, to for visibility. The staff notes were suggesting a planting along the corner of the proposed development, as the vegetative height will not face those restrictions and will offer additional building screening. Ms. Woodburn agreed with this recommendation and will increase vegetation at the location recommended in the staff notes.

Mr. Harris reiterated his concern that the items on page three of the September 24, 2015 memo from Tidewater Engineering & Surveying in response to the Conservation Commission be included in the final plan. Ms. Kalmar confirmed the letter would be in the applicant's file.

Mr. Di Matteo stated the state's definition of a wetland impact includes tree removal. Therefore, he would like to modify his staff notes to clearly note the impact, but note the impact is limited and, per state regulations, allowable. Mr. Di Matteo also recommended including the wetland impact activity to

the Findings of Fact so the Board is then able to vote on whether they feel this is an acceptable, nonregulated activity.

Mr. Alessee Move to accept the final plan application and approve with conditions the final site plan for 89 Route 236 (Map 28, Lot 14-2) located in the Commercial-2 Zone. for owner and applicant Rockwell Homes, LLC. upon the review and voting, in the affirmative, on the Findings of Fact Ms. Driscoll-Davis seconded

MOTION PASSED 5-0-0

KITTERY PLANNING BOARD

FINDINGS OF FACT -

APPROVED

for

**Rockwell Homes, LLC, 89 Route 236
Mixed Use Development Site Plan**

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: Owner/applicant Rockwell Homes, LLC request consideration of plans for a single, 2,520-square-foot building containing business offices and a showroom and a drive-through-only restaurant at 89 Route 236 (Tax Map 28, Lot 14-2) in the Commercial 2 (C-2) Zone

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 1/14/2016;

Sketch Plan Review	Held	6/11/2015
Site Visit	Held	9/3/2015
Preliminary Plan Completeness Review	Held, accepted	8/20/2015
Public Hearing	Held	9/10/2015
Preliminary Plan Approval	Granted (conditional)	9/10/2015
Final Plan Approval	Granted (conditional)	1/14/2016

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes dated 1/14/2016 (Hereinafter the "Plan").

1. Subdivision Review Application and Drainage Analysis, Tidewater Engineering & Surveying, received July 23, 2015 and revised December 14, 2015.
2. Original Site Plan, Civil Consultants, REV date February 20, 2014
3. Amended Site Plan, Existing Conditions Plan, Grading and Drainage Plan, Landscape Plan, Site Lighting Plan (Charron Inc), Erosion and Sedimentation Control Plan, Detail Sheets, Architectural Drawings (J. Winslow Hutchins), and Stormwater Report, Tidewater Engineering & Surveying, received July 23, 2015, with a revision dates through 12/14/2015
4. MDOT Traffic Movement Permit dated 11/23/2015
5. MDEP Stormwater Permit By Rule application dated 9/21/2015

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section **16.10.8.3.4. and as recorded below:**

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

The proposed mixed-use building that includes a drive-thru restaurant (Aroma Joe's) with no accommodation for seating has received a MDOT traffic moving permit and the planning board concurred with the reduced parking proposed due to the type of restaurant and likely limited parking demand for the primary office use (owners Rockwell Homes) proposed. A condition of approval requires that parking requirements will be reevaluated if the proposed uses change and/or if it is evident the demand is greater than anticipated.

The proposed Development appears to conform to Title 16 and Title 16.9.3 has been met with a positive finding on Title 16.9.3.4.o. The Board finds this standard has been met.

**Vote of 4 in favor 1 against 0 abstaining
Mr. Harris opposed**

B. Freshwater Wetlands Identified.

All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

A small wetland along Route 236 has been identified. The Board finds this standard has been met..

**Vote of 4 in favor 0 against 1 abstaining
Mr. Harris abstaining**

C. River, Stream or Brook Identified.

Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.

None have been identified. The Board finds this standard is not applicable. .

**Vote of 4 in favor 0 against 1 abstaining
Mr. Harris abstaining**

D. Water Supply Sufficient. {and}

The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

E. Municipal Water Supply Available.

The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

The Kittery Water District provided a letter of evaluation verifying its capacity to supply water to the proposed project. The Board finds these standards has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
F. Sewage Disposal Adequate.
<i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
Location of subsurface wastewater disposal system and a reserve system have been located on the plan and a completed HHE-200 application with test pit information has been submitted. The Board finds this standard has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
G. Municipal Solid Waste Disposal Available.
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
The proposed development accommodates a dumpster. The Board finds this standard has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
H. Water Body Quality and Shoreline Protected.
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
The development is not within 250 feet of any regulated (non-forested) wetland as it relates to the shoreland overlay zone. The Board finds this standard is not applicable.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
I. Groundwater Protected.
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
As referenced in F. Sewage Disposal Adequate, the proposed development will not adversely affect the quality or quantity of groundwater. The Board finds this standard has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
J. Flood Areas Identified and Development Conditioned.
<i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>

The property is not located within a flood prone area. The Board finds this standard is not applicable.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
K. Stormwater Managed.
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
CMA, town peer-review engineer reports that the applicant has prepared a complete stormwater design and associated analysis and the proposed development meets the requirements of the LUDC. The design was prepared by Tidewater Engineering & Surveying and reviewed by CMA Engineers.
The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management. The Board finds this standard has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
L. Erosion Controlled.
<i>The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.</i>
The Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval #2).
The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site. The Board finds this standard has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
M. Traffic Managed.
<i>The proposed development will:</i> <ol style="list-style-type: none"> 1. <i>Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and</i> 2. <i>Provide adequate traffic circulation, both on-site and off-site.</i>
An analysis of the traffic generation has been completed and reviewed by CMA, and the Maine DOT who, after a meeting with the Town, CMA, the applicant and their agents, granted a Traffic Movement Permit for the proposed development. This includes a right-turn pocket on Rt. 236. CMA has some additional comments that are identified in their 1/4/2016 review letter that the applicant will be required to follow as part of Condition # 6., and Condition # 4 as related to the parking requirements.
The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation. The Board finds this standard has been met.
Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining
N. Water and Air Pollution Minimized.
<i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i>

<ol style="list-style-type: none"> 1. Elevation of the land above sea level and its relation to the floodplains; 2. Nature of soils and sub-soils and their ability to adequately support waste disposal; 3. Slope of the land and its effect on effluents; 4. Availability of streams for disposal of effluents; 5. Applicable state and local health and water resource rules and regulations; and 6. Safe transportation, disposal and storage of hazardous materials.
<ol style="list-style-type: none"> 1. The development is located outside of a Flood Hazard Area. 2. An completed HHE has been submitted for subsurface wastewater disposal systems 3 thru 6. Not applicable to the proposed development.
<p>It does not appear the proposed development will result in undue water or air pollution The Board finds this standard has been met.</p>
<p>Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p>
<p><i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i></p>
<p>There is no significant change proposed in the use of the property that would have an undue adverse impact on aesthetic, cultural or natural values.</p>
<p>The property does not include any significant aesthetic, cultural or natural values that require protection. The Board finds this standard has been met.</p>
<p>Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining</p>
<p>P. Developer Financially and Technically Capable.</p>
<p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p>The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan. The Board finds this standard has been met.</p>
<p>Vote of <u>4</u> in favor <u>0</u> against <u>1</u> abstaining Mr. Harris abstaining</p>

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: None

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)

2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. that any changes to the intensity of use and/or it becomes evident to the Code Enforcement Officer, that there is insufficient parking on site, available parking must be increased as determined and approved by the planning board
5. All Notices to Applicant contained in the Findings of Fact (dated: January14, 2016).

Conditions of Approval (Not to be included on the final plan):

6. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation of final Mylar.

Notices to Applicant: (not to be included on the final plan)

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. The owner and/or developer, in an amount and form acceptable to the town manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.
5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 4 in favor 0 against 1 abstaining

Mr. Harris abstaining

APPROVED BY THE KITTELY PLANNING BOARD ON January 14, 2016

Ann Grinnell, Planning Board Chair

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 2 – 3 Knight Ave – Shoreland Development Plan Review

Action: Accept or deny plan application; Approve or deny plan. Owner/applicant Christopher G. Eckel requests consideration of plans to remove and reconstruct an unattached garage and implement several improvements to the lot including a stairway, two pathways, and a retaining wall within 75 feet of a protected water body. The lot is located at 3 Knight Ave (Tax Map 4 Lot 70) in the Mixed Use – Kittery foreside (MU-KF) and Shoreland Overlay (OZ-SL-250') zones. Agent is Ken Markley, North Easterly Surveying.

Mr. Ken Markley, North Easterly Surveying, gave a presentation to the Board, which included the following points:

- Existing garage is unusable for its intended purpose and is not structurally capable of holding a vehicle
- Mr. Eckel began work on his property, including a gravel area, retaining wall and two steps leading to his front door, without obtaining a permit. He was issued a stop work order by the Code Enforcement Officer, and was directed to the Planning Board prior to any further development.
- The property has two large trees which restricts development potential
- The proposed garage is designed specifically so it will have minimal impact on the native vegetation
- The proposed garage meets the dimensional requirements of an expansion within the 75-foot setback from a protected resource and does not increase nonconformance

Mr. Di Matteo asked the Board if they would like to discuss the application at this time, or if they would prefer to schedule a site walk and public hearing. Ms. Driscoll-Davis stated she would be interested in a site walk. Ms. Kalmar agreed and suggested 10am on Thursday, February 4, 2016.

**Ms. Driscoll-Davis made a motion to accept the Shoreland Development Plan application dated 12/23/2015 from Christopher Eckel for 3 Knight Avenue (Tax Map 4 Lot 70) in the Mixed Use-Kittery Foreside, Shoreland Overlay and Commercial Fisheries/Maritime Uses Zone
Ms. Lynch Seconded**

Ms. Driscoll-Davis made a motion to continue the Shoreland Development plan application dated 12/23/2015 from Christopher Eckel for 3 Knight Avenue (Tax Map 4 Lot 70) in the Mixed Use-Kittery Foreside, Shoreland Overlay and Commercial Fisheries/Maritime Uses Zone, to hold a site walk on February 4th, 2016 and a public hearing on February 11th, 2016.

MOTION PASSED 5-0-0

Mr. Markley asked if the Board would like to discuss staff comments so he is able to revise the plan prior to the site walk or public hearing. Ms. Kalmar stated it would be helpful to discuss during the site walk, and suggested the Board reference Title 16.3.2.17.D.1.d.2.a.i.

ITEM 3 – 32 Seapoint Rd – Shoreland Development Plan Review

Action: Accept or deny plan application; Approve or deny plan. Owner/Applicant Pop held, Inc requests consideration of plans to expand the principle dwelling unit located at 32 Seapoint Rd (Tax Map 64 Lot 27) in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250') zones. Agent is Ken Markley, North Easterly Surveying.

Mr. Ken Markley, North Easterly Surveying gave a presentation to the Board on behalf of the applicant. Mr. Markley described the proposal and outlined setback and dimensional requirements for the base and overlay zones. Ms. Driscoll-Davis asked if there would be any need for the septic system to be changed. Mr. Markley stated the septic was previously updated and no further updates are required at this time.

Ms. Driscoll-Davis asked if the variance issued by the Board of Appeals would be stated on the plan. Mr. Markley noted that it is currently, and it will be in the final plan as well. Ms. Driscoll-Davis asked if the Board of Appeals allowed any variances for setbacks. Ms. Kalmar stated that verifying setback standards is the responsibility of the Planning Board, but noted the proposed development does not create greater nonconformance to setbacks.

Ms. Kalmar asked if a diagram illustrating the square footage and volume calculations could be submitted. Mr. Markley noted a submission was made by the architect earlier today. Mr. Di Matteo confirmed receipt, but noted a more detailed diagram is necessary.

Ms. Kalmar asked if the plan changed to show the appropriate building coverage level. Mr. Markley confirmed.

Ms. Earledean Wells noted the plan does not clearly differentiate between building areas to be removed and new development. Ms. Wells asked if future applications submissions could expressly illustrate what is being torn down vs being built.

Mr. Harris made a motion to accept the Shoreland Development Plan application dated 10/21/2015 from Pop Held, Inc for 32 Seapoint Road (Tax Map 64 Lot 27) in the Residential-Rural Conservation and Shoreland Overlay Zones

Ms. Lynch seconded

Motion approved 5-0-0

Kittery Planning Board

APPROVED

**Findings of Fact
For 32 Seapoint Road
Shoreland Development Plan Review**

WHEREAS: Pop Held, Inc requests approval of their Shoreland Development Plan to expand an existing non-conforming single-family dwelling on the property located at 32 Seapoint Road (Tax Map 64 Lot 27) located in the residential-rural conservation and shoreland overlay zones, hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 1/14/2016}

Hardship Variance Granted	12/8/2015
Shoreland Development Plan Review	1/14/2016
Site Walk	
Public Hearing	
Approval	1/14/2016

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”): {as noted in the plan review notes prepared for 1/14/2016}

1. Shoreland Development Plan Application, received 10/21/2015.
2. Site Plan, Anderson Livingston Engineers, Inc. October 21, 2015

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D Shoreland Overlay Zone
<i>1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...</i>
<u>Findings:</u> The proposed development increases the property’s devegetated area from 14.1% to 15.2%.
<u>Conclusion:</u> The requirement appears to be met.
Vote: <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances
<i>A. Except as otherwise provided in this Article, a nonconforming conditions must not be permitted to become more nonconforming</i>
<u>Finding:</u> The existing structure does not meet the 40-foot front yard setback required in the R-RLC zone. The proposed development does not result in setbacks less than those existing and therefore does not increase nonconformance.
<u>Conclusion:</u> The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

See 16.6.6.1 and its reference to 16.6.6.2 below.

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.5.5 above] **must use the following criteria as the basis of a decision:**

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

The Board must also give consideration to the factors listed in 16.6.6.2.

Finding: The proposed development does not have an adverse impact on the use of adjacent properties, permitted or legally established uses in this, or adjacent, zones or the health, safety and welfare of the Town.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs [A through C] below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

Finding: The majority of the existing structure is located within the 100-foot setback from the upland edge of the tidal wetland where volume and area calculations are required. Development on structures located within the required setback from a protected resource is subject to a lifetime limit of no more than thirty percent (30%) increase in volume and floor area. The proposed development is within this maximum with an increase of 25.77% and 14.58% for volume and floor area, respectively.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: 5 in favor 0 against 0 abstaining

2. Not result in water pollution, erosion or sedimentation to surface waters;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters.

Conclusion: This requirement appears to be met

Vote: 5 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The proposed development is connecting to an existing septic system.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

Conclusion: The proposed development does not appear to have an adverse impact. With conditions #2 and #3, this standard appears to be met.

Vote: _5_ in favor _0_ against _0_ abstaining

5. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;

Finding: Shore cover is not adversely impacted

Conclusion: This requirement appears to be met.

Vote: _5_ in favor _0_ against _0_ abstaining

6. Protect archaeological and historic resources;

Finding: There does not appear to be any resources impacted.

Conclusion: This requirement appears to be met.

Vote: _5_ in favor _0_ against _0_ abstaining

7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;

Finding: The proposed development is not in the commercial fisheries/maritime use zone.

Conclusion: This requirement is not applicable.

Vote: _5_ in favor _0_ against _0_ abstaining

8. Avoid problems associated with floodplain development and use;

Finding: The proposed development is not located within a flood zone

Conclusion: This requirement appears to be met.

Vote: _5_ in favor _0_ against _0_ abstaining

9. Is in conformance with the provisions of this code;

Finding: The proposed development conforms to Title 16 with the exception of building coverage. The Residential – Rural Conservation zone has a 6% maximum building coverage standard. The existing and proposed building coverage levels are 5.2% and 6.3%, respectively. The applicant was granted a hardship variance through the Kittery Board of Appeals to increase the maximum building coverage standard from 6% to 6.3% at the December 8, 2015 meeting. The proposed development may not exceed 6.3%.

Conclusion: This requirement appears to be met.

Vote: _5_ in favor _0_ against _0_ abstaining

10. Be recorded with the York county Registry of Deeds.

Finding: A plan suitable for recording has been prepared.

Conclusion: As stated in the Notices to Applicant contained herein, shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote: 5 in favor 0 against 0 abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of Pop Held, Inc, owner and applicant, to expand an existing non-conforming single-family dwelling located at 32 Seapoint Road (Tax Map 64, Lot 27) in the Residential-Rural Conservation(R-RL) and Shoreland Overlay (OZ-SL-250') zones and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer.
5. All Notices to Applicant contained herein (Findings of Fact dated 1/14/2016).

Conditions of Approval (not to be depicted on final plan):

6. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 5 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON January 14, 2016

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

Mr. Harris offered an explanation as to his abstaining vote on the Findings of Fact for Item 1. Mr. Harris referenced the nine reasons the proposed wetland activity was exempt from NRPA permitting as outlined on page 3 of the September 24, 2015 Response to Conservation Commission letter from Tidewater Engineering & Surveying. At the time of voting, Mr. Harris believed the development was going to be permitted to be outside the scope of what was outlined in the September 24, 2016 memo. Mr. Di Matteo clarified that he was not suggesting the board permit looser guidelines, but was amending the staff notes and Findings of Fact to clearly state why this development is permitted. Mr. Di Matteo also noted that while word plan is often used to depict the visual of the proposed development, the total plan includes the background documentation and correspondence that occurs prior to the Board's final vote. Therefore, the September 24, 2015 memo is and will be included in the file for Item 1 (89 Route 236) and is included as part of the record for their final vote. Ms. Kalmar added the purpose of Mr. Di Matteo's addition to the staff notes and Findings of Fact was to explain the justification of the Board not requiring a permit or wetland alteration application for the impact on the wetland.

ITEM 4 - Town Code Amendments – 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. (Ordained 9/24/2012; effective 10/25/2012); **16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green S trip**
Action: review amendment and schedule a public hearing. The proposed amendments provide clarity with regard to open space and other requirement standards in cluster residential and cluster mixed-use development

Mr. Di Matteo reviewed the history of the Town Code Amendment process beginning with a workshop in May with the goal of creating a clearer regulation that serves the intended purpose of the code. There is a public hearing scheduled for the January 28, 2016 Planning Board meeting.

The Board reviewed the proposed amendments and had the following comments:

- 16.8.11.1.D – The use of the word buffer may not be appropriate. Possibly replace with another word to express intended purpose of protecting or preserving the existing conditions, and avoid creating a situation where a vegetation would block a scenic vista
- 16.8.11.6.I.5 – A conversation about including setbacks with abutting properties ensued. Mr. Di Matteo noted a conflict with the reference to Table 16.9, which specifically references setbacks from wetlands and water bodies. Ms. Kalmar suggested splitting the section and having 16.8.11.6.I.5.a focus on wetlands and water bodies, and 16.8.11.6.I.5.b focus on abutting properties
- 16.8.20.1 – Green Strip
 - A review of the language of ‘Green Strip’ occurred and questions of whether there should be a definition specifying what the intent of the green strip is; i.e. grassy lawn vs vegetation with a minimum height requirement.
 - The Board questioned a merger of 16.8.20.1 Green Strip with 16.9.1.7 Buffer Areas
- 16.8.20.1.A – Change “abutting properties” to “abutting property lines”
- 16.8.20.1.A – A conversation whether a 20 foot vs 50 foot green strip between property lines is necessary. The Board reached the consensus that 20 feet is appropriate.
- 16.8.20.1.B – Change language to “No less than fifty (50) feet deep along the frontage of existing roadways.”; eliminate “as described in the Comprehensive Plan”

Ms. Kalmar suggested continuing forward with the public hearing scheduled for January 28, 2016 to seek public input but waiting until the May meeting with Town Council to present to ensure the amendments are complete.

Mr. Harris questioned land rights and ownership of dedicated open space in a cluster subdivision, specifically, whether a developer is able to sell dedicated open space for future development and, if not, who is charged with maintaining that open space. Mr. Harris stated he felt an undue burden is placed on developers who have to pay taxes on land they are not free to use. Ms. Driscoll-Davis clarified the open space mandate is a tradeoff for the financial and efficiency benefits of a being able to develop more units in a smaller area. Mr. Di Matteo added the developer is no longer responsible for the land once they sell it to either a new landowner, or a homeowner’s association.

Mr. Alesse made a motion to schedule a public hearing for Item 4 on January 28, 2016 related to Town Code Amendment 16.8.11, 16.8.11.1, 16.8.11.3, 16.8.11.5, 16.8.11.6, 16.8.20.1

Ms. Driscoll-Davis Seconded

MOTION PASSED 4-0-1 with Mr. Harris abstaining

ITEM 5 – Town Code Amendments – 16.10.3 – Development Plan Review and Approval Process; 16.10.3.2 Other Development Review; 16.10.3.4 Shoreland Development Review; 16.10.10 Shoreland Development Review; 16.10.10.1.1 Permits Required; 16.10.10.1.2 Permit Application; 16.10.10.2 Procedure for Administering Permits

Action: review amendment and schedule a public hearing. The proposed amendments address plan review procedures for development applications located in the Shoreland Overlay Zone.

Mr. Di Matteo stated the goal of this amendment is to limit the number of the Shoreland Development Zone applications that come before the Board by allowing those that have limited or no impact on the regulatory standards of the Shoreland Zone to be approved by the Code Enforcement Officer.

Ms. Driscoll-Davis asked Mr. Di Matteo to provide an example of a proposal that would currently need Planning Board approval, which would not with the proposed amendments. Mr. Di Matteo described an application to extend a porch roof over a set of stairs of a dwelling located within the 100' setback of the HAT. Mr. Di Matteo noted the proposed development does not increase devegetated levels, is not an expansion of the dwelling, and does not create a greater encroachment of setbacks. Ms. Driscoll-Davis clarified development entirely outside of the 100-foot setback no longer requires Planning Board Approval. Mr. Di Matteo confirmed.

The Board reviewed the amendments and had the following recommendations:

- Mr. Alesse noted the language used in 16.10.3.2 is confusing and proposed simplifying it to state:

16.10.3.2 Other Development Review.
An applicant or applicant's authorized agent need not obtain Planning Board approval for the following (A-D) unless proposed development is subject to a Shoreland Development Plan Review.
- Line 108 – duplicate language. Remove the words “and” and “in”
- Line 51 – remove language “other”
- Lines 114-117 – Ms. Driscoll-Davis expressed concern over the ability of an application submission without the signature of the property owner. Mr. Di Matteo clarified there must be written documentation by the property owner, however it can be in the form of a faxed letter or email in the event the property owner is unavailable but would like to proceed with the development.
- Line 68 – Change wording to: “Timber harvesting and clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the shoreland Resource Officer or Code Enforcement Officer.”
- Line 120 – Ms. Driscoll-Davis asked for clarification on the line “All applications must be dated, and the Code Enforcement Officer, or his/her representative..”. Mr. Di Matteo stated anyone in the Planning Officer may receive an application.

Mr. Alesse moved to schedule a public hearing on Town Code Amendment 16.10.3, 16.10.3.2, 16.10.3.4, 16.10.10, 16.10.10.1.1, 16.10.10.1.2, 16.10.10.2 for February 25, 2016.

Ms. Driscoll-Davis seconded

MOTION PASSED 5-0-0

ITEM 6 – Town Code Amendments – 16.2 Definitions; 16.8.8.2.3 Applicability; 16.10.7.2 Final Plan Application Submittal Content

Action: review amendment and schedule a public hearing. The proposed amendments provide clarity with regard to a Municipal Separate Storm Sewer System (MS4) regulation for a Post-Construction Stormwater Management Plan.

Ms. Kalmar noted line 15 has the term “redevelopment” directly followed by a definition and asked whether this definition should be included in Title 16.2.

Mr. Alesse recommended the comma after “i.e.” be removed.

Line 16-18; Ms. Lynch asked for clarification on why “one acre or more” and “less than one acre” are independently defined. Mr. Di Matteo stated he would review this with the Shoreland Resource Officer.

Ms. Kalmar stated her interpretation is that the two pieces are referring to two separate scenarios, if the property is larger than one acre; or if the property is smaller than one acre, but plans to be a piece of a larger development, such as a subdivision. Ms. Driscoll-Davis asked where a scenario such as that would occur. Ms. Kalmar suggested a phased development might be the reason for that clarification.

Mr. Alesse suggested the word “activity” on line 16 might not be necessary. Mr. Di Matteo stated development and activity are two independent regulatory terms. Ms. Driscoll-Davis suggested a definition for “activity” might be helpful.

Ms. Kalmar made a motion to schedule a public hearing for Town Code Amendment Title 16.2 Definitions; 16.8.8.2.3 Applicability; 16.10.7.2 Final Plan Application Submittal Content for February 25, 2016.

Mr. Alesse seconded

MOTION PASSED 5-0-0

ITEM 7 – Board Member Items / Discussion

Ms. Driscoll-Davis stated the upcoming Comprehensive Plan Committee will be held on January 20, 2016 in Conference Room A. Mr. Di Matteo stated there is still one opening for a resident on the Comprehensive Plan Committee.

Ms. Kalmar informed the Board of the MMA Workshop held in Saco on February 23, 2016 and reminded the board the next local Workshop will not be until December, 2016. Ms. Lynch stated she has signed up and conformation has been received. Ms. Lynch included this is her second time attempting to attend this training as it reached maximum capacity at the October meeting. Ms. Spitko agreed to register Mr. Harris and Ms. Kalmar. Mr. Alesse stated he has registered.

Ms. Kalmar asked if a letter of recommendation has been prepared for the Foreside Neighborhood Committee. Mr. Di Matteo stated he will have one prepared for the Board’s review at the January 28, 2016 Planning Board meeting.

ITEM 8 – Town Planner Items

Mr. Di Matteo requested a 6-month extension on behalf of Aaron Henderson for 42 State Road, Tax Map 3 Lot 5, 6, 7. Mr. Henderson reported a delay in recording the mylar due to awaiting approval from MDOT.

Mr. Alesse made a motion to grant a 6 month extension to the 7/9/2015 site plan approved for 42 State Road (Tax Map 3 Lot 5,6,7).

Ms. Driscoll-Davis seconded

MOTION PASSED 5-0-0

Mr. Alesse moved to adjourn

Ms. Driscoll-Davis seconded

Motion carried 5-0-0.

The Kittery Planning Board meeting of January 14, 2016 adjourned at 8:30 p.m.

Submitted by Rebecca Spitko, Assistant town Planning, on January 21, 2016

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.